

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THELMA BRUNIUS and LORING  
BRUNIUS,

Plaintiffs,

v.

CALIFORNIA AIR RESOURCES BOARD,  
PEDRO CAMPOS, COUNTY OF EL  
DORADO, KRISTIN SCHAEFFER,  
WALTER JUKES, JIM APPELGATE,  
J.SESAK, NOLAN TRACY, W.  
PHILLIPS,

Defendants.

CIV-S-03-0620 DFL-DAD

MEMORANDUM OF OPINION  
AND ORDER

Plaintiff Loring Brunius alleges that defendants conducted an unconstitutional search of his rock quarry. Following several rulings by the court, the sole remaining claim is a Fourth Amendment claim against defendants Kristin Schaeffer ("Schaeffer") and Walter Jukes ("Jukes") that the warrant lacked probable cause. Jukes and Schaeffer now move for summary judgment based upon qualified immunity. For the following reasons, the court GRANTS defendants' motion.

I.

Plaintiff owns and operates a serpentine rock quarry in El Dorado County ("the County"). (SUF ¶ 1.) Serpentine rock contains varying concentrations of naturally occurring asbestos. (07/06/2004 Order at 2.) Because of this asbestos content, plaintiff's quarry is subject to state and local regulations regarding the sale and use of serpentine rock. (Id.) These regulations require the keeping of sales records and inclusion of asbestos warnings on sales receipts. See Cal. Code Regs. tit. 17, § 93106(e).

The County's Environmental Management Department ("Department") is responsible for enforcing state air pollution regulations, including the asbestos regulations at issue here. (SUF ¶ 2.) Schaeffer and Jukes were County inspectors. (Id. ¶ 4.) On January 8, 2002, Toni Johnson ("Johnson") wrote to the Department complaining about the delivery of serpentine rock from plaintiff's quarry to her neighbor, Jon Jakovac ("Jakovac"). (07/06/2004 Order at 2.) Johnson stated that the rock was being used for road surfacing. (Id.)

Several days later, on January 11, 2002, Schaeffer and Pedro Campos ("Campos"), an employee of the California Air Resources Board, visited Johnson's property and saw the serpentine rock being used as surfacing material. (SUF ¶ 6.) During the visit, Johnson showed Schaeffer pictures of delivery trucks from plaintiff's quarry entering Jakovac's property and delivering the serpentine rock. (Supplemental Schaeffer Decl. at 3.) However,

1 Johnson also told Schaeffer that Jakovac informed her that he was  
2 not planning on using the serpentine rock as road surfacing, but  
3 intended to pave over the rock. (Id. Ex. 1, at ex. B.)

4 Following this visit to Johnson's property, Schaeffer made  
5 efforts to investigate Johnson's complaint. First, on the same  
6 day she visited Johnson's property, Schaeffer attempted  
7 unsuccessfully to contact Jakovac about his use of the serpentine  
8 rock. (SUF ¶ 7.) Schaeffer then contacted plaintiff on January  
9 16, 2002 and asked to see copies of sales receipts relating to  
10 the sale of the serpentine rock.<sup>1</sup> (Loring Brunius Decl. ¶ 14.)  
11 Plaintiff refused to provide access to the requested documents.  
12 (Supplemental Gumpert Decl. Ex. A at 83.)

13 Finally, on January 20, 2002, Jakovac sent Campos a scale  
14 ticket showing delivery of rock from plaintiff's quarry in  
15 December 2001; Campos forwarded this to Schaeffer on January 30,  
16 2002. (07/06/2004 Order at 3.) The scale ticket did not  
17 include any specific information regarding the nature of the rock  
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20 <sup>1</sup> There is a dispute as to what actually took place on  
21 January 16. Schaeffer contends that she specifically asked to  
22 see documents relating to the sale of serpentine rock to Jakovac.  
23 (Supplemental Schaeffer Decl. at 3.) She also claims plaintiff  
24 admitted he sold serpentine rock to Jakovac, but refused to  
25 provide any access to records for that sale. (Id. at 3-4.) By  
26 contrast, plaintiff contends that Schaeffer's request was not  
specifically linked to the Jakovac transaction, but was a request  
to see all sales receipts pertaining to the sale of serpentine  
rock for road surfacing purposes. (Loring Brunius Decl. ¶ 14.)  
He claims he told her his quarry does not sell such rock for road  
surfacing purposes. (Id.) He also asserts that he did not admit  
selling serpentine rock to Jakovac. (Id.) These factual  
disputes, however, do not affect the Fourth Amendment analysis.

1 delivered (i.e. whether it was serpentine rock). (Supplemental  
2 Schaeffer Decl. Ex. 1, at ex. A.) Rather, it merely indicated  
3 that rock had been delivered to Jakovac's property from  
4 plaintiff's quarry. (Id.) No receipt or other document with the  
5 requisite asbestos warning was attached to the scale report.  
6 (Id.)

7 Based on this investigation, on February 21, 2002, Schaeffer  
8 decided to seek inspection warrants for records from plaintiff's  
9 quarry. (SUF ¶ 10.) With the assistance of a deputy district  
10 attorney from El Dorado County, Schaeffer drafted and submitted a  
11 declaration in support of the warrant request. (Id.) In the  
12 declaration, Schaeffer described the letter from Johnson, her  
13 visual inspection of the Jakovac property, and plaintiff's  
14 refusal to provide her with records of the sale to Jakovac.  
15 (Supplemental Schaeffer Decl. Ex. 1.) Her affidavit also stated  
16 that a June 27, 2000 agreement between plaintiff and El Dorado  
17 County obligated plaintiff to make the relevant documents  
18 available for inspection. (Id.)

19 Schaeffer concluded that there was reason to believe that  
20 plaintiff sold serpentine rock to Jakovac for road surfacing  
21 without asbestos warnings, in violation of California law. (Id.)  
22 Schaeffer maintained that it was imperative that the inspection  
23 occur "as soon as possible," though her affidavit did not specify  
24 why. Schaeffer also attached four documents as exhibits to her  
25 affidavit: (1) the scale ticket provided by Jakovac; (2) a  
26 memorandum summarizing her investigatory efforts in response to

1 Johnson's complaint; (3) the June 27, 2000 agreement between the  
2 County and plaintiff; and (4) the County regulation requiring the  
3 provision of a warning label on the sale of this type of rock.

4 (Id.)

5 Schaeffer presented the affidavit to a superior court judge  
6 on February 22, 2002. (Id. at 4.) Based on Schaeffer's  
7 affidavits and accompanying documents, the judge issued the  
8 warrant. On February 26, 2002, defendant Jukes was called into a  
9 meeting with Schaeffer, Campos, and two law enforcement officers  
10 to discuss service of the warrant at plaintiff's quarry. (Mot.  
11 at 4.) Jukes, who had no prior involvement with the preparation  
12 of the warrants, looked at the inspection warrant and concluded  
13 that it appeared valid. (Id.) Schaeffer, Campos, Jukes, and the  
14 officers then traveled to plaintiff's quarry and executed the  
15 warrant. (Id.)

16 At the quarry, plaintiff and his wife, Thelma, objected to  
17 the search, as did their lawyer, Freda Pechner, whom they had  
18 telephoned. (07/06/2004 Order at 4.) The Brunius' attempted to  
19 prevent the officials from proceeding to the rear of the office  
20 where the files were located, resulting in Thelma's arrest.  
21 (Id.) Schaeffer, along with Jukes and Campos, searched the  
22 quarry files. (Id.) After locating the relevant records,  
23 Schaeffer asked plaintiff if they could use his photocopier to  
24 make copies. (Id.) When plaintiff refused, Schaeffer removed  
25 one storage box, one file, and one delivery receipt from the  
26 quarry. (Id.) These materials were returned to Pechner three

1 days later. (Id.)

2 Thelma and Loring Brunius filed this complaint on March 26,  
3 2003. On September 8, 2003, the court dismissed all of Thelma  
4 Brunius' claims. (09/09/2003 Order at 10.) All of Loring  
5 Brunius' claims, save for his § 1983 Fourth Amendment claim, were  
6 dismissed as well. On July 6, 2004, the court granted summary  
7 judgment to Campos, the county officers, and El Dorado County,  
8 leaving Schaeffer and Jukes as the only defendants. (07/06/04  
9 Order at 15.) The court also granted summary judgment to  
10 defendants on plaintiff's claim that the execution of the warrant  
11 was unreasonable. (Id.) However, it denied summary judgment on  
12 plaintiff's claim that the warrant was not supported by probable  
13 cause. (Id. at 7-8.) Accordingly, the only remaining claim is a  
14 claim against Schaeffer and Jukes that the warrant lacked  
15 probable cause in violation of the Fourth Amendment.

## 16 II.

17 Schaeffer and Jukes both argue that qualified immunity bars  
18 plaintiff's claim against them. Because plaintiff advances  
19 different legal theories with regard to Schaeffer and Jukes, the  
20 court separately analyzes the claims against them.

### 21 A. Defendant Schaeffer

22 Plaintiff continues to frame his claim against Schaeffer as  
23 a claim of judicial deception, arguing that Schaeffer made  
24 misstatements in her affidavit that robbed the warrant of  
25 probable cause. Deliberate falsity or reckless disregard for the  
26 truth in an affidavit in support of a search warrant violates the

1 Fourth Amendment if the false statement is necessary to probable  
2 cause. Liston v. County of Riverside, 120 F.3d 965, 972 (9th  
3 Cir. 1997). The Ninth Circuit has articulated a special test for  
4 analyzing qualified immunity in the context of a judicial  
5 deception claim. Hervey v. Estes, 65 F.3d 784, 788 (9th Cir.  
6 1995). To defeat a request for qualified immunity for such a  
7 claim, the plaintiff must make a "substantial showing of  
8 [defendant's] deliberate falsehood or reckless disregard for  
9 truth." Id. Once that substantial showing is made, the  
10 plaintiff must then establish that the misstatement was material  
11 to the judge's decision to issue the warrant. Id. Although  
12 plaintiff has made a substantial showing of two intentional  
13 falsehoods contained in Schaeffer's affidavit, neither of these  
14 identified misstatements are material to a probable cause  
15 analysis.

16 1. Intentional or Reckless False Statements

17 Under the first part of the test, plaintiff need not prove  
18 that Schaeffer subjectively intended to mislead the issuing  
19 court. Lombardi v. City of El Cajon, 117 F.3d 1117, 1124 (9th  
20 Cir. 1997). Rather, plaintiff need only show, by substantial  
21 evidence, that Schaeffer intentionally or recklessly made false  
22 statements or material omissions in her affidavit. Id. Although  
23 plaintiff previously identified only two allegedly false  
24 statements in Schaeffer's affidavit, he now identifies seven such  
25 statements. However, plaintiff has only produced sufficient  
26 evidence of intentional or reckless falsity as to the two

1 statements identified in the earlier motion.

2       None of plaintiff's new allegations of false statements are  
3 supported by substantial evidence. First, plaintiff alleges that  
4 Schaeffer falsely stated that she sought the warrant to conduct  
5 an "inspection" of the sales receipts, knowing full well that her  
6 true intention was to conduct a "search" of the business premises  
7 for the purpose of learning the identity of plaintiff's  
8 customers. (Opp'n at 12-13.) However, there is no evidence to  
9 support this allegation. Instead, the evidence shows that  
10 Schaeffer limited her search to an inspection of records where  
11 she might reasonably have expected to find the sales receipts  
12 from the Jakovac transaction, seizing only one box containing  
13 scale tickets, one file for a particular driver, and one delivery  
14 receipt.

15       Second, plaintiff alleges that Schaeffer wrongfully failed  
16 to disclose that she did not have a warrant on January 16, 2002,  
17 when she first asked plaintiff for access to the sales receipts.  
18 (Id. at 13.) Plaintiff asserts this fact was critical because it  
19 allowed Schaeffer to deprive plaintiff of the right to 24-hour  
20 prior notice (before execution of the warrant) typically mandated  
21 by Cal. Civ. Proc. Code § 1822.56. (Id.) However, Schaeffer did  
22 not suggest in her affidavit that she had a warrant on January  
23 16, 2002. Therefore, her affidavit is not misleading in this  
24 respect.<sup>2</sup>

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26       <sup>2</sup> Moreover, contrary to plaintiff's suggestion, whether  
Schaeffer had a warrant on January 16th is not relevant to  
determining whether the 24-hour notice provision in § 1822.56 can



1 Third, plaintiff asserts that Schaeffer failed to disclose  
2 that she intended to have Campos, Jukes, and several armed  
3 deputies assist in executing the warrant. (Id. at 13-14.)  
4 Rather, she stated in her affidavit that she sought "an  
5 inspection warrant to allow myself or another representative" to  
6 inspect the sales receipts at plaintiff's quarry. (Supplemental  
7 Schaeffer Decl. Ex. 1.) Again, plaintiff's allegation is not  
8 supported by substantial evidence, as he presents no evidence  
9 showing that Schaeffer had decided to involve Campos, Jukes, or  
10 any officers at the time she filed her affidavit. To the  
11 contrary, Schaeffer states that she made that decision after the  
12 warrant was issued. (Id. at 7.) Therefore, this was not an  
13 intentional or reckless false statement. Nor is it a statement  
14 affecting probable cause.

15 Fourth, plaintiff contends that Schaeffer invited the false  
16 inference that the warrant should issue for a search of  
17 plaintiff's offices to "review receipts for aggregate sold from  
18 Weber Creek Quarry," when her true purpose was only to seek  
19 records relating to the Jakovac transaction. (Opp'n at 14.)  
20 This argument has no merit. Schaeffer made clear in her  
21 affidavit that she was seeking the warrant to inspect records  
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23 be waived. Section 1822.56 only states that "[w]here prior  
24 consent has been sought and refused, notice that a warrant has  
25 been issued must be given at least 24 hours before the warrant is  
26 executed, unless the judge finds that immediate execution is  
reasonably necessary in the circumstances shown." Even if  
Schaeffer's statement were relevant to an analysis of § 1822.56,  
it is not material to a constitutional probable cause analysis  
for the reasons discussed below.

1 related to the Jakovac transaction and, to that end, was  
2 requesting a warrant to investigate sales receipts for  
3 plaintiff's quarry. Schaeffer could not have requested a warrant  
4 to inspect only the sales receipts for the Jakovac transaction  
5 because she did not know what day the transaction took place.  
6 There is nothing misleading or false about her statements in this  
7 regard.

8 Finally, plaintiff takes issue with Schaeffer's statement  
9 that she had reason to believe that Jakovac was using the  
10 serpentine rock for "road surfacing." (Id.) Plaintiff contends  
11 that Schaeffer knew this statement was false when she made it  
12 because she had been told by both plaintiff and Johnson that  
13 Jakovac did not intend to use the rock for that purpose. (Id.)  
14 However, the evidence shows that Schaeffer did have evidence  
15 suggesting that the rock was being used for road surfacing.  
16 Specifically, when Schaeffer made a visual inspection of the  
17 Jakovac property during her January 11, 2002 visit with Johnson,  
18 she observed the serpentine rock being used for road surfacing.  
19 (Supplemental Schaeffer Decl. at 3.)

20 However, the two alleged false statements plaintiff  
21 previously identified are supported by substantial evidence of  
22 falsity. First, plaintiff presented sufficient evidence showing  
23 that Schaeffer misrepresented the scope of the June 27, 2000  
24 agreement between plaintiff and the County. (Opp'n at 13.)  
25 Schaeffer states in the affidavit that the agreement required  
26 plaintiff to "make any and all of these documents immediately

1 available for inspection." (Supplemental Schaeffer Decl. Ex. 1.)  
2 The reference to "these documents" in the affidavit is a  
3 reference to the "sales receipts" mentioned in the previous  
4 sentence in the affidavit. (Id.) In the agreement itself,  
5 however, "these documents" refers to four specific types of  
6 documents, none of which are sales receipts. (Id. Ex. 1, at ex.  
7 C.) Accordingly, Schaeffer's statement regarding the agreement  
8 was false and was at least in reckless disregard of the truth  
9 given that Schaeffer had access to the agreement and could have  
10 inquired further with the County if she had questions regarding  
11 its application.

12 Second, plaintiff presents substantial evidence suggesting  
13 that Schaeffer misrepresented that it was "of the utmost  
14 importance and urgency that the Environmental Management  
15 Department obtain[] a Warrant to inspect these facilities as soon  
16 as possible." (Id. Ex. 1.) The evidence does not show an urgent  
17 need to search the quarry. If there was a public health hazard  
18 requiring immediate attention, it was at the Jakovac property,  
19 where the possibly asbestos-laden rock was allegedly being used  
20 for surfacing. The only suspected violation by plaintiff was the  
21 sale of the rock without required warnings. This may qualify as  
22 a public health or safety matter, but not one of the utmost  
23 urgency.

24 In sum, plaintiff has presented sufficient evidence of two  
25 intentionally or recklessly false statements in Schaeffer's  
26 affidavit: (1) her statement regarding the June 27, 2000

1 agreement; and (2) her statement about the need for urgent  
2 action.

3 2. Materiality of Falsehood

4 However, the court's finding that plaintiff has presented  
5 sufficient evidence of intentionally or recklessly false  
6 statements does not end the inquiry. Rather, plaintiff must also  
7 "establish that, but for the dishonesty, the challenged action  
8 would not have occurred," for "[i]t is only objectively  
9 unreasonable for a law enforcement officer to deliberately or  
10 recklessly misstate facts material to the probable cause  
11 determination." Hervey, 65 F.3d at 789; Butler v. Elle, 281 F.3d  
12 1014, 1024 (9th Cir. 2002).

13 Here, plaintiff cannot make this showing because the  
14 identified false statements are irrelevant to a probable cause  
15 determination. The statement regarding the agreement does not  
16 bear upon whether there were sufficient grounds for believing  
17 that plaintiff had committed certain regulatory infractions.<sup>3</sup>  
18 Similarly, Schaeffer's statements regarding the urgent need for  
19 the inspection relate solely to whether it was appropriate to  
20 waive the 24-hour notice requirement under Cal. Civ. Proc. Code §  
21 1822.56. In short, the statements plaintiff identifies are, at  
22 most, material to state or municipal warrant requirements, not to  
23 probable cause.

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25 <sup>3</sup> Moreover, although Schaeffer did mischaracterize the  
26 agreement in her affidavit, she also attached a copy of the  
agreement as an exhibit to her affidavit. The judge, therefore,  
was given complete information regarding the agreement.

1 Throughout this litigation, plaintiff has repeatedly  
2 attempted to transform alleged violations of state or municipal  
3 warrant requirements into a claim that defendants violated the  
4 Fourth Amendment. Plaintiff contends that these alleged  
5 violations preclude defendants from arguing that the warrant they  
6 obtained satisfies the Fourth Amendment. However, violations of  
7 state or municipal warrant requirements do not equate to  
8 violations of the Fourth Amendment. As the Supreme Court has  
9 explained:

10 [w]e have never intimated . . . that whether or not a  
11 search is reasonable within the meaning of the Fourth  
12 Amendment depends on the law of the particular State in  
13 which the search occurs. We have emphasized instead  
14 that the Fourth Amendment analysis must turn on such  
15 factors as 'our societal understanding that certain  
16 areas deserve most scrupulous protection from  
government invasion.' . . . Respondent's argument is no  
less than a suggestion that concepts of privacy under  
the laws of each State are to determine the reach of  
the Fourth Amendment. We do not accept this  
submission.

17 California v. Greenwood, 486 U.S. 35, 43-44, 108 S.Ct. 1625  
18 (1988) (emphasis in original). Thus, it is not material to any  
19 constitutional analysis whether the obtained warrant violated  
20 certain state or municipal requirements. The only pertinent  
21 inquiry is whether the warrant was supported by probable cause.

22 In sum, because the alleged false statements included in  
23 Schaeffer's affidavit are not material to probable cause,  
24 Schaeffer is entitled to qualified immunity on plaintiff's  
25 judicial deception claim.

26 3. Fourth Amendment "Probable Cause" Claim:

1 As suggested in the court's previous summary judgment  
2 ruling, plaintiff's Fourth Amendment claim is more appropriately  
3 analyzed as a claim asserting lack of probable cause, rather than  
4 as a claim for judicial deception. (07/06/2004 Order at 7-8.)  
5 Even when interpreted in such a way, however, Schaeffer is still  
6 entitled to qualified immunity.

7 In analyzing Schaeffer's request for qualified immunity, the  
8 court must first decide if, on plaintiff's alleged facts, a  
9 constitutional right has been violated. Saucier v. Katz, 533  
10 U.S. 194, 201, 121 S.Ct. 2151 (2001). If so, the court must then  
11 decide whether this right was clearly established at the time of  
12 the unconstitutional conduct. Id. A right is "clearly  
13 established" if "a reasonable official would understand that what  
14 he is doing violates that right." Id. at 202 (quoting Anderson  
15 v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034 (1987)). "The  
16 relevant, dispositive inquiry in determining whether a right is  
17 clearly established is whether it would be clear to a reasonable  
18 officer that his conduct was unlawful in the situation he  
19 confronted." Id.

20 The court previously concluded that a jury could find that  
21 the warrant lacked probable cause and that the search violated  
22 the Fourth Amendment. (07/06/2004 Order at 7-8.) However, the  
23 court did not address whether an objectively reasonable official  
24 would have understood that her actions were unconstitutional.  
25 For the following reasons, the court now concludes that any  
26 Fourth Amendment violation was not clearly established and that

1 Schaeffer is entitled to qualified immunity.

2       The "probable cause" requirements for administrative  
3 inspections of the type involved here is difficult to discern  
4 from the case law.<sup>4</sup> It is clearly established that  
5 the quantum of probable cause required for code-enforcement  
6 inspections is less than the traditional probable cause showing  
7 required for searches connected to criminal investigations.  
8 Camara v. Municipal Court, 387 U.S. 523, 538, 87 S.Ct. 1727  
9 (1967); See v. City of Seattle, 387 U.S. 541, 545 87 S.Ct. 1737  
10 (1967). Such inspections, the Supreme Court has held, should be

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13       <sup>4</sup> In fact, it is possible that no warrant was necessary  
14 because the rock quarry industry is a "closely regulated  
15 industry." See New York v. Burger, 482 U.S. 691, 702-703, 107  
16 S.Ct. 2636 (1987). Burger establishes four criteria for a  
17 warrantless administrative search: (1) the business to be  
18 searched must be part of a "closely regulated" industry; (2)  
19 there must be a substantial government interest that informs the  
20 regulatory scheme pursuant to which the inspection is made; (3)  
21 the warrantless inspection must be necessary to further the  
22 regulatory scheme; and (4) the inspection program, in terms of  
23 certainty and regularity of its application, must provide a  
24 constitutionally adequate substitute for a warrant by advising  
25 the owner that a search is being made pursuant to the statute and  
26 by limiting the discretion of the inspecting officers. Id.  
Here, the regulation that requires plaintiff to keep the records  
also requires him "to provide [the records] to the APCO [Air  
Pollution Control Officer] for review upon request." Cal. Code  
Regs. tit. 17, § 93106(e)(4). Further, stone quarries have been  
held to be closely regulated businesses that can be subjected to  
warrantless searches. See Donovan v. Dewey, 452 U.S. 594,  
605-06, 101 S.Ct. 2534 (1981). However, defendants have provided  
no analysis of Burger's four requirements, especially the third  
and fourth requirements. Accordingly, the court cannot determine  
whether this particular type of search would qualify as a valid  
warrantless administrative search. Nonetheless, the heavily  
regulated nature of plaintiff's business makes more unclear the  
appropriate "probable cause" standard applicable to the present  
search, and is one more reason why qualified immunity is  
appropriate in this case.

1 governed "against a flexible standard of reasonableness that  
2 takes into account the public need for effective enforcement of  
3 the particular regulation involved." See, 387 U.S. at 545.

4 However, this "flexible standard" has been applied in an  
5 inconsistent and confusing manner by the courts. As a leading  
6 treatise concludes, this area of the law is inherently "murky."<sup>5</sup>  
7 Wayne LaFave, Search and Seizure: A Treatise on the Fourth  
8 Amendment § 10.2(d). "Although the Supreme Court . . . made  
9 clear that a warrant could issue upon [evidence of a regulatory  
10 violation], it did not specify the quantum of specific evidence  
11 that must be presented to establish the reasonableness of the  
12 inspection." West Point-Pepperell, Inc. v. Donovan, 689 F.2d  
13 950, 957 (11th Cir. 1982). The parties have not cited, nor could  
14 the court find, a Ninth Circuit case clarifying the application  
15 of this "more flexible" standard to a search of the type involved  
16 here.

17 Given the unsettled nature of this area of the law, that  
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19 <sup>5</sup> "When one moves from the type of inspection at issue in  
20 See to those which are directed uniquely at business operations  
21 or at certain types of businesses, as with the inspections in  
22 Colonnade and Biswell, the grounds-for-inspection question  
23 becomes even more murky. In those cases where the inspector  
24 obtained a warrant . . . , the courts are inclined to adhere  
25 rather closely to the type of reasoning used in Camara; the  
26 traditional quantum of probable cause is not required, and the  
warrant is upheld upon some lesser showing. One possibility is  
simply a showing that the particular business has not been  
subjected to inspection for some appreciable interval. Another  
is a showing of suspicion short of that which would suffice to  
establish probable cause for a more traditional search to find  
evidence of crime but yet 'not patently groundless.' Wayne  
LaFave, Search and Seizure: A Treatise on the Fourth Amendment §  
10.2(d).



1 Schaeffer had some evidence suggesting that the quarry may have  
2 delivered serpentine rock without proper warnings, and that a  
3 superior court judge authorized the search, the court finds that  
4 any constitutional violation was not clearly established.  
5 Accordingly, Schaeffer is entitled to qualified immunity.<sup>6</sup>

6 B. Defendant Jukes

7 Jukes was not involved in any aspect of the procurement of  
8 the warrant. Rather, he first learned of the warrant when he was  
9 called to a meeting on the day of the search and asked to  
10 participate in the execution of the warrant. In its previous  
11 ruling, the court held that Jukes could be held liable for the  
12 Fourth Amendment violation because he assisted in the search of  
13 the business records. (07/06/2004 Order at 14-15.) The court  
14 did not consider whether Jukes reasonably relied on the warrant,  
15 however, because he never raised a qualified immunity defense.

16 The court concludes that Jukes, like Schaeffer, is entitled  
17 to qualified immunity. In the context of the Fourth Amendment,  
18 qualified immunity protects officers' objectively reasonable  
19 reliance on a search warrant. See Ramirez v. Butte-Silver Bow  
20 County, 298 F.3d 1022, 1027-28 (9th Cir. 2002). The  
21 reasonableness of an officer's actions often depends on his role  
22 in the search. Id. Here, the evidence suggests that Jukes  
23 played only a limited role in the search, similar to that of a  
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25 <sup>6</sup> Schaeffer also contends that qualified immunity is proper  
26 because she reasonably relied on an attorney's advice in drafting  
her affidavit. In light of the court's ruling in favor of  
Schaeffer, it need not reach this alternative argument.

1 line officer. (Supp. Jukes Decl. at 2-3.) However, whether  
2 Jukes was a search leader or a line officer, he is entitled to  
3 qualified immunity. Given the uncertainty over the quantum of  
4 probable cause necessary to justify this type of search, a  
5 reasonable official would be justified in relying upon the  
6 warrant and the judicial authorization. Accordingly, Jukes is  
7 entitled to qualified immunity.<sup>7</sup>

8 III.

9 For the forgoing reasons, the motion by Schaeffer and Jukes  
10 for summary judgment is GRANTED. The clerk shall enter judgment.  
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12 IT IS SO ORDERED.

13 Dated: July 28, 2005.  
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15 /s/ David F. Levi

16 DAVID F. LEVI

17 United States District Judge  
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23 <sup>7</sup> Plaintiff's argument to the contrary lacks merit.  
24 Plaintiff argues that Jukes is not entitled to qualified immunity  
25 because the warrant made clear that only Schaeffer and  
26 "authorized representatives" could execute the warrant, and Jukes  
knew that he was not a qualified representative. (Opp'n at 15.)  
However, in its earlier ruling, the court rejected plaintiff's  
argument that the participation of other individuals in the  
execution of the warrant violated the Fourth Amendment.  
(07/06/2004 Order at 9.)